

## § 10.52

### § 10.52 Practice which puts trade buyer independence at risk.

The practice specified in this section is deemed to place trade buyer independence at risk within the description of exclusion in § 10.51: Industry member payments of money to the employee(s) of a trade buyer without the knowledge or consent of the trade buyer-employer in return for the employee agreeing to order distilled spirits, wine, or malt beverages from the industry member. The practice enumerated here is an example and does not constitute a complete list of those situations which result in such control.

### § 10.53 Practices not resulting in exclusion. [Reserved]

### § 10.54 Criteria for determining trade buyer independence.

The criteria specified in this section are indications that a particular practice between an industry member and an officer, employee, or representative of a trade buyer, other than those in § 10.52, places trade buyer independence at risk. A practice need not meet all of the criteria specified in this section in order to place trade buyer independence at risk.

(a) The practice restricts or hampers the free economic choice of a trade buyer to decide which products to purchase or the quantity in which to purchase them for sale to retailers and consumers.

(b) The industry member obligates the trade buyer to participate in the promotion to obtain the industry member's product.

(c) The trade buyer has a continuing obligation to purchase or otherwise promote the industry member's product.

(d) The trade buyer has a commitment not to terminate its relationship with the industry member with respect to purchase of the industry member's products.

(e) The practice involves the industry member in the day-to-day operations of the trade buyer. For example, the industry member controls the trade buyer's decisions on which brand of products to purchase, the pricing of products, or the manner in which the prod-

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ucts will be displayed on the trade buyer's premises.

(f) The practice is discriminatory in that it is not offered to all trade buyers in the local market on the same terms without business reasons present to justify the difference in treatment.

## PART 11—CONSIGNMENT SALES

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AUTHORITY: 15 U.S.C. 49-50; 27 U.S.C. 202 and 205.

SOURCE: T.D. ATF-74, 45 FR 63258, Sept. 23, 1980, unless otherwise noted.

### Subpart A—Scope of Regulations

#### § 11.1 General.

The regulations in this part, issued pursuant to section 105 of the Federal